

MEMORANDUM FOR THE FILES

A call was received on 10 November 1948 from Mr. Atchison of the legal staff of the Atomic Energy Commission (Code 144, Ext. 317), requesting information as to how this Agency interpreted Public Law 623 of the 80th Congress -- an act to provide for payment of salaries covering periods of separation from the Government service in the case of persons improperly removed from such service. Specifically, the problem was whether CIA employees, being under Schedule A, could be considered within the classified service for purposes of recovery under this statute. Mr. Atchison felt that they could not be so included, and wished to know how we handled the situation. In support of his position, Mr. Atchison cited the law of 27 March 1922 (42 Stat. 470) and further support in 30 Op. A.G. 181 (1913).

I suggested that Mr. Atchison call Mr. Klein of the Civil Service Commission's legal staff for a ruling, which he did. He then informed me that the Civil Service Commission took the position that the provisions of Public Law 623 of the 80th Congress only applied to Schedule A personnel if they had their own permanent Civil Service status or are veterans.

Mr. Klein pointed out that this position was sustained by the Comptroller General in a long list of decisions, including -- 4 Op. C.G. 849, 6 Op. C.G. 534, 9 Op. C.G. 284, 19 Op. C.G. 424, and 21 Op. C.G. 717. Also applicable were Executive Order 9830 and remarks in Part 9 of the Federal Personnel Manual.

While this appeared to be the official interpretation of the GAO, the Court of Claims has evidently held that any employee of the Government, whether on Schedule A or not, is entitled to the benefits of pay if wrongfully suspended. They do not agree with the GAO's "no work, no pay" theory, and therefore have allowed recovery in at least two cases. One of these is the Elchibegoff case, 106 Court of Claims 541, and the other is a Court of Claims case in 1947 or 1948 involving Loren Wittner.

While the statute does not appear to cover the situation explicitly, it is probably covered by Civil Service Commission rules. Inroads have been made in GAO's position by the Court of Claims decisions, the Veterans Preference Act, and certain statutory exceptions.

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